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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-950*

13 **ARLENE M. SCHMIDT**  
545 East Olive Avenue  
Sunnyvale, CA 94086

**ACCUSATION**

14 **Registered Nurse License No. 347590**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about September 30, 1982, the Board of Registered Nursing issued Registered  
23 Nurse License Number 347590 to Arlene M. Schmidt ("Respondent"). The Registered Nurse  
24 License was in full force and effect at all times relevant to the charges brought herein and will  
25 expire on October 31, 2014, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Registered Nursing ("Board"),  
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent  
3 part, that the Board may discipline any licensee, including a licensee holding a temporary or an  
4 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the  
5 Nursing Practice Act.

6 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license  
7 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the  
8 licensee or to render a decision imposing discipline on the license.

9 RELEVANT DISCIPLINARY STATUTES

10 6. Section 2761 of the Code states:

11 "The board may take disciplinary action against a certified or licensed nurse or deny an  
12 application for a certificate or license for any of the following:

13 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

14 ...

15 "(f) Conviction of a felony or of any offense substantially related to the qualifications,  
16 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
17 conclusive evidence thereof."

18 ...

19 7. Section 2762 of the Code states:

20 "In addition to other acts constituting unprofessional conduct within the meaning of this  
21 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this  
22 chapter to do any of the following:

23 ...

24 "(b) Use any controlled substance as defined in Division 10 (commencing with Section  
25 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
26 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
27 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
28 ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

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8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

## COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Criminal Conviction)

10. Respondent is subject to disciplinary action under sections 2761, subdivisions (a) and (f), 2762, subdivision (c), and/or section 490 in that on or about October 8, 2010, in a criminal proceeding entitled *The People of the State of California v. Arlene Mae Schmidt*, Santa Clara County Superior Court, Case No. B1049907, Respondent pled guilty to a violation of Vehicle Code section 23152, subdivision (b) [driving with a blood alcohol level of 0.08% or more] and an enhancement pursuant to Vehicle Code section 23578 [commission of the charged offense with a blood alcohol of 0.15% or more]. Respondent was placed on three (3) years court probation, sentenced to ten (10) days in county jail [fulfilled by participation in a weekend work program],

1 ordered to complete the First Offender DUI Program and pay fines in the amount of \$1875.00,  
2 including \$881.05 as restitution to the City of Sunnyvale for property damage.

3 a. The circumstances of Respondent's conviction are that on August 27, 2010, at 12:26  
4 a.m., the Sunnyvale Police Department was dispatched to the scene of a non-injury vehicle  
5 accident. Respondent was observed colliding her vehicle into an apartment building on El  
6 Camino Real in Sunnyvale, California. She was also seen colliding into a dumpster and a fence  
7 while attempting to maneuver her vehicle. On contact, Respondent had the odor of alcohol on her  
8 breath and admitted to having consumed seven (7) glasses of wine prior to the accident. She  
9 failed field sobriety testing at the scene. A subsequent blood test at 1:33 a.m., demonstrated that  
10 Respondent's blood alcohol level was .23%.

#### 11 SECOND CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)

13 11. Respondent is subject to disciplinary action under sections 2761, subdivision (a)  
14 and/or 2762, subdivision (b), in that on or about August 27, 2010 she was involved in a non-  
15 injury vehicular accident in Sunnyvale, California. Respondent failed field sobriety testing and  
16 had a blood alcohol level of .23%. The facts in support of this cause for discipline are set forth  
17 above in paragraph 10.

#### 18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
20 and that following the hearing, the Board of Registered Nursing issue a decision:

21 1. Revoking or suspending Registered Nurse License Number 347590, issued to Arlene  
22 M. Schmidt;

23 2. Ordering Arlene M. Schmidt to pay the Board of Registered Nursing the reasonable  
24 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
25 Code section 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: April 22, 2013

Louise R. Bailey  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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